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**Corporate Trade Compliance**  
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Managing Director

February 7, 2011

*Via E-mail DDTCResponseTeam@state.gov*

Charles B. Shotwell, Director  
Office of Defense Trade Controls Policy  
Directorate of Defense Trade Controls  
SA-1, 12<sup>th</sup> Floor  
Bureau of Political Military Affairs  
U.S. Department of State  
Washington, DC 20522-0112.

Re: "Category VII Revision" and "USML—Positive List."

Dear Mr. Shotwell:

Please find below and in several listed attachments, hereto, comments on two notices of proposed rulemaking published in the Federal Register on December 10, 2010: Public Notice 7256 Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Category VII; and Public Notice 7257 Revisions to the United States Munitions List.

Please also consider these comments in the context of my letter dated September 10, 2010 raising concerns with respect to a separate Federal Register notice that would reverse longstanding U.S. Government policy barring access by proscribed nationals (e.g., China, Iran, North Korea) to U.S. weapons technology in the possession of foreign corporations overseas.

The major focus of the Administration's export control reform initiative is military export controls and commercial arms sales. Its proposal is to:

- (1) Reduce the U.S. Munitions List by about 75 percent<sup>1</sup>;
- (2) Integrate what remains of the Munitions List with the Commerce Control List into a single new list; and
- (3) Seek agreement from other countries to make conforming changes to the international Munitions List (on which they base their national controls).

The context is that the U.S. has dominated the international arms market since the end of the Cold War. But, present economic conditions require "reform" in order to boost U.S. manufacturing and jobs. According to a rosy scenario presented in the Administration's narrative, export control reform is a "twofer" – higher fences around fewer items will mean more export earnings and better security.

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<sup>1</sup> Based on the Administration's representation that the review conducted of Category VII is a "template" for the rest of the Munitions List – and, indeed, if the "exclusive use" definition and other reductions in control over training and maintenance are implemented the overall reduction may be even higher.

Unfortunately, as described more fully below, the Administration's facts are wrong. Its conception of U.S. military export controls is misinformed. The methodology used to rationalize the reduction in arms export control is specious. Not surprisingly, the framework resulting from such a dubious foundation is woefully uninformed of possible repercussions to U.S. security and foreign policy interests around the world.

Further, the purported economic benefits of this radical decontrol of commercial arms transfers will not materialize. Instead, the initiative will hasten outsourcing of U.S. manufacturing and defense industry jobs, and a decline of the U.S. defense industrial base.<sup>2</sup>

At the end of the day there are no "higher fences" in this initiative, but only "fewer fences" and fewer items controlled. There are no 21<sup>st</sup> century threats addressed – only ignored.

Because Congress has plenary authority for regulating foreign commerce and your proposed framework is in serious conflict with existing United States law, enactment of a new law must precede any implementation by the Executive Branch of a new paradigm for military export controls.

### **Bad Facts**

While any administration is prone to excessive enthusiasm when attempting to present its proposals in the most favorable light, the Administration's export control reform initiative appears to have lost sight entirely of Daniel Patrick Moynihan's dictum that, in Washington, everyone is entitled to their own opinion, but not to their own facts.

Most importantly, the current munitions control system was not designed for the Cold War or for a bipolar world. The Arms Export Control Act of 1976, which the current munitions control system implements, was, itself, considered a "reform" measure. Its purpose was to address "runaway" arms sales to the Middle East, to shift the emphasis away from expanding arms exports to strengthening controls, and to provide for an integrated framework for consideration of all arms exports (commercial and governmental). The International Traffic in Arms Regulations (ITAR), which implement AECA were revised extensively by Bush 41 and republished by the Clinton Administration. Tab 1 describes a number of errant statements by the Administration which have not enhanced public understanding, of which the most egregious are:

- European aerospace practices to "design-out" U.S. content are not a visceral reaction to U.S. ITAR controls but a deliberate response and retaliatory policy to specific U.S. Government decisions denying re-export of U.S. ITAR content in their satellite sales to China and in their military aircraft sales to Venezuela, and DOD policies to "black-box" certain systems (e.g., software) approved for export, which Europeans argue affects their operational sovereignty.<sup>3</sup> (The export license is merely the vehicle for communicating high level policy decisions in such instances.)
- Under our current system, we do not devote the same resources to protecting brake pads for M1 Abrams tanks as we do to protecting the M1A1 tank itself. As described more fully in Tab 1, this statement has no basis in reality.

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<sup>2</sup> By the term "U.S. Industrial Base" I mean manufacturing and jobs located within the fifty States --and not a global base from which U.S. DOD/AT&L and major U.S. defense firms purchase goods and services without reference to country of origin.

<sup>3</sup> Ironically, the U.S. response to this commercial strategy has been to award an increasing share of DOD procurement to the very companies who practice this strategy.

### **Misconception of Military Export Controls**

The Administration's proposed framework conflates commercial arms exports with dual use exports by integrating the two in a single new list. However, commercial arms exports have never been considered normal commercial trade. Unlike dual use exports, commercial arms exports are not covered by the WTO rules-based system. From the earliest days of GATT there has been a security exception covering fissionable material and "traffic in arms, ammunition and implements of war for purposes of supplying a military establishment of the member or of another country."<sup>4</sup> This exception permits member states to protect essential security interests and to take action in furtherance of obligations under the Charter of the United Nations. It also reflects a recognition that arms and munitions exports are made not for consumption in the civilian economy and not with a view toward commercial resale but for supplying military establishments.<sup>5</sup>

In this context, longstanding U.S. arms export controls have been concerned with regulating not only leading edge weapons systems, but also the supply, servicing and training of foreign military establishments generally – and the conduct of private persons in these enterprises. The scope of those controls is not, as suggested by the Administration, reflective of a static analysis of military technology conducted at the onset of the Cold War but a deliberate policy of considering these activities in a foreign policy context alongside other United States interests. It reflects a long held U.S. view that a comprehensive system of arms export controls is the one best suited to protecting the totality of U.S. interests and to denying the entry of U.S. military articles of any type into the international grey arms market – for which small arms and military parts are the lifeblood.

### **Specious Methodology**

The assertion that reformulating the U.S. Munitions List to more closely resemble the Commerce Control List will end jurisdictional disputes and ambiguities by making it a "positive list" (characterized by technical parameters) is fanciful. This assertion is undermined by the Commerce Department's own statistics which reflect that it received no less than 13,238 formal commodity classification applications over the past 24 months from companies asking where on the "positive" Commerce List their products were controlled.

The inter-agency finding that "design intent" (e.g., "designed for military application") as a basis for control should be eliminated on the grounds of ambiguity and subjectivity is seriously misinformed. This terminology has been in standard use by the United States and other countries for decades, and plays a prominent role in numerous arms control agreements to which the United States is a Party, including very recent arms control agreements negotiated by this Administration, such as the New START Treaty.<sup>6</sup>

The proposal to control key military systems and technology remaining on the U.S. Munitions List pursuant to a new "exclusive use" definition of the term "specially designed" is

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<sup>4</sup> See Havana Charter and Article XXI of the GATT (1947). The security exception covering traffic in arms is currently reflected throughout WTO Rules (e.g., Art. XIV bis of the General Agreement on Trade in Services; Art. XXI of the General Agreement on Tariffs and Trade; and Art. 73 of the TRIPS Agreement).

<sup>5</sup> These fundamental distinctions which are well established in international law may help provide the answer the Administration appears to find elusive as to why Congress enacted separate statutes, prescribing separate systems.

<sup>6</sup> For example, the New START Treaty Protocol defines a reentry vehicle as "that part of the front section that can survive reentry through the dense layers of the Earth's atmosphere and that is *designed for* delivering a weapons to a target ..." The Fifth Agreed Statement reflects U.S.-Russian agreement not to pursue production, testing or deployment of systems "*designed for* the rapid reload of ICBM launchers and SLBM launchers."

very troubling in view of the First Circuit Court of Appeals' clear findings in *United States v. Lachman* 387 F.3d 42. In effect, you would apply to the U.S. Munitions List and the AECA an "exclusive use" interpretation that a Federal Appeals Court found is not even available under the EAA because it permits "easy evasion" of U.S. government export controls "through deliberate design of items so they have both permitted and prohibited uses."

It is inexplicable that you are even considering this in a proposed regulation when the Court provided clear instruction as to the proper meaning of the term under the statute. Defense firms are not average lay persons and understand perfectly when they are designing an item for the military and when they are modifying a commercial article for the military.

### Unexamined Repercussions

Tab 2 describes some of the more conspicuous challenges for U.S. interests inherent in the Administration's approach. One or two are worth noting here. When, as proposed, you remove 74 percent of the items currently controlled on the Munitions List and invite other countries to conform the international Munitions List and their own national controls, this also implies –

- (1) Opening the door for Russia and China to resume 74 percent of their spare parts supply and related military assistance to Iran's major conventional weapons programs (because there is no P-5 agreement to apply UNSC sanctions to dual use items unrelated to WMD). U.S. negotiators worked hard to cover spare parts in Resolution 1929.<sup>7</sup> No interest of the United States is served by opening this up; and
- (2) Facilitating: (a) China's acquisition of tens of thousands of military items coming off the Munitions List (because a corollary of USML removal is to remove all such items from the suspension Congress imposed on China in Pub. L. 101-246 (Tiananmen sanctions)); and (b) China's future production of military components and parts for the U.S. defense supply chain (similarly permissible when Tiananmen sanctions no longer apply). Surely, these are not outcomes that serve the interests of the United States.

Despite the global economic slump, the U.S. role as the top arms supplier has continued to grow. That growth has taken place in the context of a policy of stringent control and restraint applicable to all arms exports (whether commercial or governmental) followed by every U.S. President since Roosevelt. The policy was most recently promulgated in PDD-34 during the Clinton Administration and continued in force by Bush 43. It recognizes that "defense exports have important foreign policy and national security implications that differ dramatically from strictly commercial exports" and which require "control, restraint, and transparency of arms transfers."<sup>8</sup> However, the Administration's proposal is now to remove commercial arms exports from that policy and to integrate them with Commerce's dual use exports in a single new list, effectively treating commercial arms exports in the future as normal commercial trade.

At a time of tumult throughout the Middle East and expanding arms sales by Russia in Latin America – as well as a European commitment to its own arms embargo on China that is increasingly shaky -- a significant relaxation by the U.S. of controls over commercial arms exports may not be the smartest message to send. While it is not easy to gauge the reactions of the other arms suppliers<sup>9</sup>, Russia in particular is fully conversant in U.S. policy in this area and has been the recipient of past criticism from other countries, disdainful of its rationale for

<sup>7</sup> The same concerns apply in spades to the North Korean and other UNSC sanctions.

<sup>8</sup> Secretaries Clinton and Gates recently referred to PDD-34 when responding to the concerns of 198 House Members about the Administration's \$60 billion arms sale to Saudi Arabia.

<sup>9</sup> See "Germany Considers Loosening Arms Export Controls," *Spiegel International*, November 12, 2010. <http://www.spiegel.de/international/germany/0,1518,728844,00.html>

dubious sales on the need for export earnings (not unlike the rationale now influencing the Administration's change in policy).

### **Field Day for Illegal Arms Brokers**

Decontrolling 74 percent of the U.S. Munitions List, developing a new framework in which defense articles remaining on the U.S. Munitions List are no longer subject to control and restraint but integrated with dual use goods and technology, and encouraging other arms suppliers to establish comparably relaxed policies in their national systems, will provide a "perfect storm" for international arms brokers that is not in the best interests of the United States or international peace and security.

A paper at Tab 3 provides a small window from published sources into the diversity and intensity of the black market for conventional arms in cases involving U.S. jurisdiction just over the past 24 months.

### **Proposal Lacks Requisite Legal Authority**

The Administration puts the cart before the horse. Congress has plenary power for regulation of foreign commerce. It has enacted a statute (Arms Export Control Act of 1976) establishing an integrated framework for all U.S. arms transfers (commercial and governmental) which specifies a policy of control and restraint for all U.S. arms transfers, and a licensing regime for commercial munitions exports. In contrast, your proposal is to establish a whole new paradigm for commercial arms exports by: (1) detaching them from the integrated framework for arms transfers; (2) removing 74 percent of them from the U.S. Munitions List authorized by AECA; (3) integrating remaining Munitions List items with Commerce- controlled dual use items in a single new list no longer subject to the policies and principles and procedures established in AECA.

A new organic statute must precede the regulatory approach you propose, which has no anchor in any United States law and whose major elements are, in fact, in serious conflict with United States law.<sup>10</sup>

The absence of authorizing legal authority is pervasive and will not be satisfied by mere technical compliance with the procedural aspects of § 2778(f)(1), as you suggest.

### **21st Century Threats**

Disappointingly, nothing has emerged from the export control reform review to date indicating consideration has been given to closing gaps or correcting deficiencies in U.S. export controls – though there is a mountain of evidence pointing the way which is gathering dust.

For example, in June 2009 GAO reported that its covert testing revealed that sensitive dual-use and military technology can be easily and legally purchased from manufacturers and distributors within the United States and illegally exported without detection. Using a bogus front company and fictitious identities, GAO purchased sensitive items including night-vision scopes currently used by U.S. soldiers in Iraq and Afghanistan to identify targets, triggered

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<sup>10</sup> In addition, it appears the Administration intends to adopt preparatory to, or coincident with, integration of the two lists, a licensing policy of exemption or general authorization for the new tier 2 and tier 3 items on the truncated Munitions List in order to mirror the recently proposed Commerce rule. That rule eliminates most export licenses for thirty-seven (37) or more countries who are members of the nonproliferation regimes and the Wassenaar Arrangement. However, 22 U.S.C. § 2778(f)(2) expressly prohibits the establishment of an exemption for a foreign country from the licensing requirements of the AECA (unless the President determines certain requirements in law can be met, which seems unlikely as they could not recently be met for either the UK or Australia).

spark gaps used to detonate nuclear weapons, electronic sensors used in improvised explosive devices, and gyro chips used in guided missiles and military aircraft and then exported a number of dummy versions of these items to a country known to be transshipment point for terrorist organizations and foreign governments attempting to acquire sensitive technology.

Similarly, it seems inexplicable that, while the U.S. Government now spends hundreds of millions of dollars to improve port security to protect against a terrorist threat, the ITAR still permits sale of harbor entrance detection devices to foreign persons in the United States without an export license. Or, that a foreign person may purchase a Mine-Resistant Ambush Protected (MRAP) vehicle in the United States at an Internet auction without any requirement for a munitions license (particularly given the enormous difficulty any metropolitan police department in the United States would have attempting to disable an MRAP vehicle).

It also seems inappropriate that, more than a decade after Ahmed Ressay was arrested attempting to smuggle explosives into the United States from Canada to use against targets in Los Angeles, any person may temporarily import into the United States any Munitions List item from Canada without a temporary import license.

### **Recipe for Outsourcing**

It would not be entirely unreasonable to argue that the present economic conditions in the United States justify taking some, but perhaps not all, of the risks described above in order to strengthen defense manufacturing and boost defense industry jobs through expanded exports. But, the problem with the Administration's initiative is that it has not addressed the factors which could enhance defense industry exports; it has assumed (wrongly) that a policy of careful controls over arms exports is inconsistent with the success of U.S. industry in the international marketplace.

That assumption, however, appears to be contradicted by the fact of sustained U.S. dominance of the international arms market since the end of the Cold War. Market realities for both controlled dual use sales and arms sales are less simple than what the Administration has portrayed.

First, with respect to dual use exports, licensed exports only accounted for less than \$3 billion in 2009 – about three-tenths of one percent (.3%) of U.S. dual use exports. China is the largest destination for controlled dual use trade. Commerce's analysis of trade with China indicates that –

- More than 50 percent of China's exports originate from foreign invested enterprises, raising concerns with regard to the competitiveness of U.S. industry and employment over the long term; and
- A review of license applications for U.S. exports to China in the past fiscal year shows that a significant number involve manufacturing equipment and facilities, electronics, and/or components for use in foreign-invested production facilities in China. Among the top-valued manufacturing equipment exported in 2009 were equipment for semiconductors, chemical manufacturing facilities, acoustics and electronic components.<sup>11</sup>

Relaxing dual-use export controls further on China, without action to correct technology transfer demands by foreign invested enterprises located in that country, can be expected to lead to precisely the same outcomes and trends witnessed in recent years – characterized by more manufacturing facilities and more U.S. jobs being permanently lost to China.

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<sup>11</sup> BIS Annual Report 2010, page 62.  
[http://www.bis.doc.gov/news/2011/bis\\_annual\\_report\\_2010.pdf](http://www.bis.doc.gov/news/2011/bis_annual_report_2010.pdf)

Second, regarding commercial arms exports, because of the national security exception in WTO Rules (including an exception covering defense procurement), most foreign governments are able to impose offset or counter trade requirements (otherwise prohibited by WTO) in their procurements from U.S. suppliers. This is particularly true of European governments, nearly all of whom seek to offset the purchase price by 100 percent from American suppliers (though not when procuring from another EU member state). This means U.S. arms sales to European governments inevitably involve requirements to purchase parts and materials from the local economy, to subcontract significant work to the local economy or, indeed, to transfer production facilities in whole or in part.<sup>12</sup>

Unless underlying market distorting measures imposed by foreign countries are corrected, significant decontrol of the U.S. Munitions List is more likely than not to lead to more outsourcing of U.S. defense industry jobs, less U.S. manufacturing and continued decline of the U.S. defense industrial base.

The toll on the U.S. defense industrial base of continuing a policy whereby the United States waives its national preference law (Buy American Act) while foreign allies use offset strategies to prop up their defense industries, can be seen by two sets of figures reported in the Department of Commerce's latest report. Defense-related merchandise exports totaled \$14.80 billion in 2009, while in 2009 U.S. industry reported entering into offset-related defense export sales contracts worth \$10.7 billion, of which 88.3 percent of the reported defense export sales contracts with offset agreements were manufacturing-related.<sup>13</sup>

Third, with respect to the domestic manufacturing long term benefits of past export control reform initiatives, it is instructive to recall a similar initiative by a previous President using remarkably similar rhetoric –

*"As we all know, the export controls in American law today no longer reflect the realities of the economic marketplace or the political realities. The cold war is over, and the technologies have changed dramatically. Therefore, today I am ordering sweeping changes in our export controls that dramatically reduce controls on telecommunications technologies and computers. These reforms will eliminate or greatly reduce controls on \$35 billion worth of high-tech products, ultimately 70 percent of all the computers. This one step alone will decontrol the export of computers, the production of which support today—today—600,000 American jobs and now more tomorrow."*

-- President Clinton, announcing the National Export Strategy, September 29, 1993.

The Clinton administration did not anticipate that in 2011 it might be hard to locate those "600,00 American jobs" as manufacturing employment in the U.S. computer industry has now reportedly fallen to 166,000, which, according to Intel's former CEO, is lower than it was before the first personal computer was built in 1975.<sup>14</sup>

Nor could it have foreseen a *New York Times* report last fall that China recently built the fastest supercomputer ever made, replacing the United States as the world leader.<sup>15</sup>

Similarly, it could not have imagined that 17 years later the United States would be spending hundreds of millions of dollars in taxpayer money to underwrite trusted chip

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<sup>12</sup> In contrast, the U.S. Government has waived the Buy American Act for nearly all members of the EU and imposes no local content requirements or offsets on successful European defense bids (which account for an increasing, though still small, share of the DoD procurement budget).

<sup>13</sup> Bureau of Industry and Security. Fifteenth Report on Offsets in Defense Trade. December 2010, pp. 7-8.y

<sup>14</sup> Andy Grove, "How to Make an American Job Before It's Too Late," *Bloomberg BusinessWeek*, July 1, 2010.

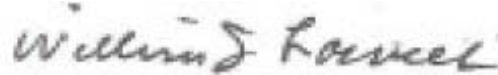
<sup>15</sup> Ashlee Vance, "China Wrests Supercomputer Title from the United States." *New York Times* October 28, 2010.

foundries in the United States because, after approving the relocation of high end integrated circuit manufacturing from the United States to China and other Asian countries, the Defense Department does not now believe such products are reliable enough to use in U.S. weapons systems.

There are numerous other reforms available to the Administration that will improve U.S. competitiveness without compromising the security and foreign policy interests of our country and the essential framework for munitions control established in the AECA.

These include long duration, through-life support licenses for OEMs, expanded use of exemptions for minor parts and components to previously approved programs, elimination of redundant approvals in export license procedures, and elimination of inter-agency staffing for licenses involving any equipment you are now prepared to see exported without a license to U.S. allies. These are the options that should be pursued in parallel with a serious study in consultation with law enforcement and intelligence agencies of measures that should be incorporated to better position the United States to meet the asymmetrical threats of the 21<sup>st</sup> Century associated with the war on terror.

Sincerely,

A handwritten signature in dark ink, appearing to read "William J. Lowell". The signature is written in a cursive, slightly slanted style.

William J. Lowell

Attachments:

- Tab 1 – Factual Problems.
- Tab 2 – Foreign Policy and Security Implications
- Tab 3 – Overview of Recent Criminal Cases



## TAB 1 – FACTUAL PROBLEMS

ERRANT STATEMENTS	FACTS
The current system was designed for the Cold War and for a bipolar world.	The ITAR was not designed for the Cold War or a bipolar world. Global munitions controls (ITAR) were first adopted in the 1930s with enactment of the Neutrality Acts after findings by the Senate Special Committee on Investigations of the Munitions Industry that U.S. defense firms were arming belligerents around the world – often both sides in a conflict – from South America to China. The ITAR has been revised many times since the end of the Cold War, including a complete overhaul undertaken by Bush 41 and endorsed by the Clinton administration in July 1993.
The current system operates under two different control lists with fundamentally different approaches to defining controlled products, administered by two different departments.	Two different federal statutes provide two different sets of authorities recognizing well-established distinctions in U.S. and international law (e.g. WTO Rules) between normal commercial trade and traffic in arms (munitions trade) which are not imported for consumption or with a view towards commercial retail. PDD-34 Conventional Arms Transfer Policy (recently cited by Secretary Clinton and Secretary Gates in their letter to 198 House Members on the \$60 billion Saudi arms sales) recognizes “defense exports have important foreign policy and national security implications that differ dramatically from strictly commercial exports” and which require “control, restraint, and transparency of arms transfers.”
The ITAR controls commercial-off-the-shelf technology (COTS)	COTS items have been excluded from Munitions List coverage by rule since 1993. <sup>16</sup> (There are only two general exceptions: small arms, such as firearms, close assault weapons and combat shotguns, which all countries control as munitions; and commercial satellites, which were placed on the Munitions List by Congress when enacting the FY 1999 NDAA.)
M1 Abrams brake pads are virtually identical to brake pads for fire trucks but the tank brake pads require a license to be exported to any country around the	M1 Abrams brake pads are not used on fire trucks. “Virtually identical” brake pads used on fire trucks are not used on M1 Abrams tanks. The reason for control of military spare parts and components is

<sup>16</sup> “COTS” is not an elastic term of art, but is defined in the Federal Acquisition Regulations at Subpart 2.1 as follows: “Commercially available off-the-shelf (COTS)” item—  
(1) Means any item of supply (including construction material) that is—  
(i) A commercial item (as defined in paragraph (1) of the definition in this section);  
(ii) Sold in substantial quantities in the commercial marketplace; and  
(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and  
(2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 ([46 U.S.C. App. 1702](#)), such as agricultural products and petroleum products.

world, while the fire truck brake pads can be exported to virtually all countries without a license.	not because the technology is sensitive but to prevent their supply to prohibited destinations where U.S. policy is to degrade the affected country's combat effectiveness (e.g., Venezuela, Iran) or is based on other foreign policy concerns relating to enforcement of UN embargoes, human rights issues, regional stability or other factors. Military components and parts, together with small arms, are the lifeblood of the international arms black market.
Under our current system, we devote the same resources to protecting the brake pad as we do to protecting the M1A1 tank itself.	Hardly. M1A1 parts are reviewed internally by the State Department to ensure the bona fides of the transaction in an abbreviated process that takes less than one week. M1A1 tanks are "major defense equipment," a category of Munitions List defense articles requiring (1) extensive interagency review involving multiple elements of DOD focused on national disclosure and MILDEP export policies, security classification guides, and, if necessary, DOD Directives and MILDEP regulations; and (2), in most cases, senior level State and NSC staff review prior to notification to Congress where additional review takes place by SFRC and HFAC in consultation with State and DOD offices.
Revising the U.S. Munitions List to more closely resemble the Commerce Control List, such that it becomes a "positive list" characterized by technical parameters will end most, if not all, jurisdictional disputes and ambiguities.	The fact that the Commerce Department received no less than 13,238 formal commodity classification applications over the past 24 months from companies asking where on the "positive" Commerce List their products were controlled is not probative of an approach that will end ambiguity and disputes.
The ITAR is causing other countries to "design out" U.S. content.	The policy begun by some European aerospace companies ten years ago of designing out U.S. components is one of response and retaliation to U.S. decisions to deny retransfer of U.S. content in satellites they wished to send to China and, more recently, military aircraft they wished to sell to Venezuela. Europeans also cite incompatibility of ITAR with "operational sovereignty" by which they mean "black box" requirements imposed by DOD which may limit understanding of embedded software and/or require service on their equipment to be done by U.S. contractors. Neither of these is a function of the ITAR but of specific policy decisions by the U.S. Government communicated through export license decisions.

## **TAB 2- FOREIGN POLICY AND SECURITY PROBLEMS**

The outlines of the approach described in the two Federal Register notices and related background material have foreign policy and security implications. This should involve extensive analysis of possible repercussions, which appear essentially unexamined up to now. For example --

### **• UNSC Sanctions**

When you reduce the scope of the USML by 74 percent and no longer subject to munitions control the spare parts, training and services needed to maintain combat effectiveness of conventional weapons (one effect of your proposal), and invite other countries to do the same by making conforming changes to the international Munitions List, you also:

- (1) Open the door for Russia and China to resume military assistance to Iran's existing conventional weapons programs, negating a major achievement by the Administration in Res. 1929 to cut off spare parts and technical assistance. That is because there is no evident understanding in the 1737 Committee to apply sanctions to dual use items except in relation to WMD and long range missiles -- and far from certain you could obtain P-5 agreement to do so.
- (2) Create loopholes in the ban on weapons imported by Iran and North Korea, by effecting a 74 percent reduction in the scope of the arms export bans currently in force on Iran and North Korea. For example, since tank parts will no longer be subject to munitions control under your revised approach, South Africa would not in the future be in a position as it is today (and was in February 2009) to intercept a \$750,000 North Korean shipment of parts through China for T-54 and T-55 tanks located in the Congo.
- (3) Weaken UNSC sanctions across the board immediately by a 74 percent reduction in international Munitions List coverage to exclude "spare parts" for conventional weapons<sup>17</sup> -- and perhaps gravely damage them over time by your plan to integrate munitions and dual use items into a single list whereby most commercial arms exports around the world would lose their identity as munitions.<sup>18</sup>

### **• U.S. Unilateral Arms Embargoes and Sanctions**

An important foreign policy tool would be hobbled as the effectiveness of unilateral U.S. arms embargoes and restrictions on a numerous countries (e.g., China, Venezuela, Syria and dozens of other countries since the end of the Cold War) designed to reduce their military readiness and/or influence their conduct and policies, would be: (a) seriously compromised by a 74 percent reduction in U.S. Munitions List

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<sup>17</sup> Unlike the United States which maintains comprehensive arms embargoes on some (but not all) countries subject to UN arms embargoes, most member states merely apply their national control lists covering military goods or arms, ammunition and implements of war.

<sup>18</sup> If most military spare parts and components are no longer on the U.S. Munitions List, they would no longer be subject to retransfer controls under ITAR, with the result that foreign producers of parts for vintage U.S. equipment sold to Iran under the Shah -- which still figures prominently in the Iran order of battle -- may also be free to supply spare parts for Iran's M-47, M-48 and M-60 main battle tanks, 50 Cobra attack helicopters, 128 Bell 205 and 206 utility helicopters, 25 F-14 Tomcats, 20 F-5B fighters, 65 F-4D/E Phantom II and 60 F-5E/F Tiger II ground attack fighter aircraft, 5 P-3 Orion maritime patrol aircraft, and 17 C-130 Hercules aircraft. "Iran: Conventional Military Capabilities." House of Commons Library Standard Note SN/IA/4264, September 24, 2009.

coverage; and (b) undermined by the integration of the Munitions List with the Commerce Control List (as dual use exports are not similarly proscribed to such countries).

- (1) Thousands of military components and parts removed from the U.S. Munitions List would no longer be subject to the U.S. arms embargo on the PRC (Tiananmen sanctions Pub. L. 101-246);
- (2) When the U.S. Munitions List is fully integrated with the Commerce Control List into a single new list all commercial arms exports would cease to be subject to Tiananmen sanctions unless Congress were to enact a new law with a new type of sanction.
- (3) Your proposal implies either undermining the entire body of U.S. sanctions law whose penalty provisions are based on distinctions between munitions licenses and dual use licenses or asking Congress to rewrite this entire body of law.<sup>19</sup>

#### • Reaction of other Major Arms Suppliers

At a time of tumult throughout the Middle East and expanding arms sales by Russia in Latin America – as well as a European commitment to its own arms embargo on China that is increasingly shaky -- a significant relaxation by the U.S. of controls over commercial arms exports may not be the smartest message to send. It reflects a major departure from PDD-34 [Conventional Arms Transfer Policy], promulgated during the Clinton administration and continued in force by Bush 43. The Administration would now effectively modify that policy in multiple ways, but mainly by henceforth only subjecting leading edge U.S. Government sales to its terms (and not commercial arms exports which would be integrated with dual use exports).

- Secretary Clinton and Secretary Gates referred to PDD-34 in their November 16, 2010 letter addressing concerns of 198 Members of the House with a \$60 billion arms sale to Saudi Arabia. PDD-34 reflects a position held by the U.S. since the 1930s that *“defense exports have important foreign policy and national security implications that differ dramatically from strictly commercial exports”* and which require *“control, restraint, and transparency of arms transfers.”*<sup>20</sup>
- Russia, in particular, is thoroughly familiar with U.S. policy on conventional arms sales and the frequent recipient of criticism from other countries disdainful of explanations for questionable arms sales on the need for export earnings (now the stated rationale of the United States for the shift in its policy).

#### • WTO Rules and the Security Exception for “Traffic in Arms”

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<sup>19</sup> Potentially many other federal statutes are also implicated and would require amendment to protect essential interests. For example, should many items remaining on the Munitions List become eligible under the Administration’s new licensing policy for export without a license pursuant to an exemption or possibly a general authorization to any of the thirty-seven or more foreign countries who are nonproliferation regime members, it may be necessary to amend 10 U.S.C. § 140c which prohibits the Secretary of Defense from withholding technical data under an invention secrecy order if regulations promulgated under either EAA or AECA, as the case may be, “authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations.”

<sup>20</sup> White House Fact Sheet on Conventional Arms Transfer Policy, February 17, 1995.

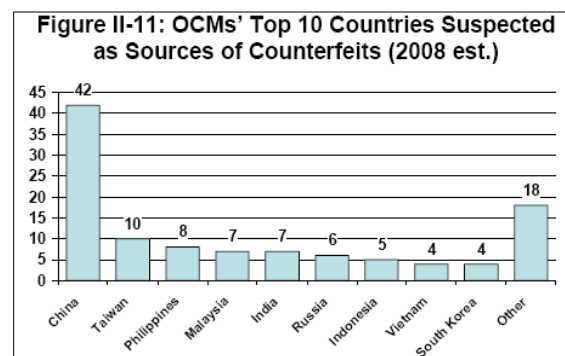
The integration (conflation) of U.S. national rules governing “traffic in arms” (commercial arms exports) with normal commercial trade (dual use exports) has implications that go beyond arms control and export control.

- Dual use trade is normal commercial trade is governed by the General Agreement on Tariffs and Trade (GATT) and the system of rules-based trade administered by the WTO and reflected in various principles and rules countries have agreed upon in multilateral and plurilateral agreements. Most normal commercial trade in goods and services, including dual use goods and technology, relates to items that are imported for consumption or commercial resale in the civilian economy.
- While the Administration’s new framework conflates munitions exports with dual use exports, munitions exports in fact are not normal commercial trade, have never been considered normal commercial trade and, unlike trade in dual use items, are not covered by WTO Rules. From the earliest days of GATT there has been a security exception covering fissionable material and “traffic in arms, ammunition and implements of war for purposes of supplying a military establishment of the member or of another country”<sup>21</sup> This exception permits member states to protect essential security interests and to take action in furtherance of obligations under the Charter of the United Nations. It also reflects a recognition that arms and munitions exports are made not for consumption in the civilian economy and not with a view toward commercial resale but for supplying military establishments.
- Detaching commercial arms exports from government arms sales and integrating the former with dual use trade in a “single list” suggests the Administration is prepared to consider reviewing the security exception in the Doha Round – either on its own initiative or in response to reactions and concerns that will likely be raised by other countries.

#### • Counterfeit Military Parts in DOD Supply Chain

Source: Office of Technology Evaluation

When you remove tens and perhaps hundreds of thousands of military parts and components currently controlled on the U.S. Munitions List with the result that most will be available for immediate outsourcing to China and other Asian countries, this will surely exacerbates the problem of counterfeit parts in DOD weapons platforms and negatively affect U.S. operational effectiveness.



<sup>21</sup> See Havana Charter and Article XXI of the GATT (1947). In the period from 1947 to 1986 there were a number of agreements which developed the basis for international trade relations. The original General Agreement on Tariffs and Trade, which incorporated relevant sections of the Havana Charter, was negotiated in 1947 and came into force in 1948. Subsequent years saw a series of eight negotiating rounds under the GATT, until the launch of the Uruguay Round in 1986. Most of the WTO agreements are the result of the 1986–94 Uruguay Round negotiations, signed at the Marrakesh ministerial meeting in April 1994. The security exception covering traffic in arms is currently reflected throughout WTO Rules (e.g., Art. XIV bis of the General Agreement on Trade in Services; Art. XXI of the General Agreement on Tariffs and Trade; and Art. 73 of the TRIPS Agreement).

U.S. component and microcircuit manufacturers have already identified China as the most frequent source of counterfeit articles finding their way into the U.S. defense supply chain (see graph inset).<sup>22</sup> It is not in the interest of the United States to make nearly all military components and parts susceptible to counterfeiting by removing them (including design and manufacturing technology) from the Munitions List and permitting their uncontrolled export to the PRC.

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<sup>22</sup> “Defense Industrial Base Assessment: Counterfeit Electronics.” U.S. Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation (January 2010).

## TAB 3 – RECENT ILLEGAL ARMS EXPORT CASES

### Select Criminal Cases Involving Arms Export Controls since January 2009

The cases below provide a snapshot –not a complete inventory – of criminal investigations involving illegal arms exports over the past two years. They provide some insight into the scale and diversity of illegal arms activities involving arrests and prosecutions by the U.S. Government, but do not include many other overseas investigations carried out by foreign governments in which U.S. authorities participate or, for that matter, the multilayered illegal arms market that has developed in recent years in the shadows of globalization.


Source: Published Sources, including DOJ Press Releases.

	<b><i>Assault Rifles and Explosives to the West Bank</i></b> – On Jan. 27, 2011, Yanny Aguila Urbay was convicted by a jury in the Southern District of Florida of conspiracy to possess stolen, fully-automatic M-16s, AK-47s and silencers, and receiving grenades and improvised explosive devices. On Dec. 16, 2010, his co-defendant, Palestinian national Abdalaziz Aziz Hamayel, pleaded guilty to conspiracy to possess stolen machine guns and to transport grenades and improvised explosive devices.
	<b><i>Electronics Used in Military Radar &amp; Electronic Warfare to China</i></b> – On Jan. 27, 2011, Yufeng Wei was sentenced in the District of Massachusetts to 36 months in prison, while on Jan. 26, 2011, her co-defendant, Zhen Zhou Wu, was sentenced to 97 months in prison. Their company, Chitron Electronics, Inc. was fined \$15.5 million. Wei, Wu and Chitron Electronics, Inc. were convicted at trial on May 17, 2010 of conspiring for a period of more than ten years to illegally export to the People's Republic of China military electronics components and sensitive electronics used in military phased array radar, electronic warfare and missile systems. Several Chinese military entities were among those receiving the exported equipment. Wu and Wei were also both convicted of filing false shipping documents with the U.S. government. As proven at trial, defendants illegally exported military electronic components to China through Hong Kong. The electronics exported are primarily used in military phased array radar, electronic warfare, military guidance systems, and military satellite communications.
	<b><i>AK-47s and Other Firearms to Mexico</i></b> – On Jan. 25, 2011, federal prosecutors in the District of Arizona announced that grand juries had returned five different indictments against 34 defendants accused of illegally trafficking firearms from the United States to Mexico. That day, law enforcement authorities in Arizona arrested 20 defendants charged in one indictment ( <i>U.S. v. Avila et al</i> ) with conspiring to purchase hundreds of firearms, including AK-47s, to be illegally exported to Mexico, by acting as “straw purchasers,” i.e., falsely declaring they were buying the weapons for themselves when they were purchasing them for others. Four other indictments ( <i>U.S. v. Flores</i> , <i>U.S. v. Broome</i> , <i>U.S. v. Aguilar</i> , and <i>U.S. v. Abarca</i> ) charged 14 additional defendants with making false statement during the purchase of a firearm, in connection with “straw purchases” of multiple firearms destined for Mexico.

	<p><b><i>Stealth Missile Exhaust Designs and Military Technical Data to China</i></b> – On Jan. 24, 2011, a federal judge in the District of Hawaii sentenced Noshir Gowadia, 66, of Maui to 32 years in prison for communicating classified national defense information to the People's Republic of China (PRC), illegally exporting military technical data, as well as money laundering, filing false tax returns and other offenses. On Aug. 9, 2010, a federal jury in the District of Hawaii found Noshir S. Gowadia guilty of 14 criminal violations after six days of deliberation and a 40-day trial. These included five criminal offenses relating to his design for the PRC of a low-signature cruise missile exhaust system capable of rendering a PRC cruise missile resistant to detection by infrared missiles. The jury also convicted Gowadia of three counts of illegally communicating classified information regarding lock-on range for infrared missiles against the U.S. B-2 bomber to persons not authorized to receive such information. Gowadia was also convicted of unlawfully exporting classified information about the B-2. Gowadia took six trips to the PRC to provide defense services in the form of design, test support and test data analysis of technologies for the purpose of assisting the PRC with its cruise missile system by developing a stealthy exhaust nozzle and was paid at least \$110,000 by the PRC.</p>
	<p><b><i>Infrared Military Technology to South Korea</i></b> – On Jan. 20, 2011, Kue Sang Chun, a former longtime employee at the NASA Glenn Research Center in Ohio and resident of Avon Lake, Ohio, pleaded guilty in the Northern District of Ohio with one count of violating the Arms Export Control Act and one count of filing false tax returns. He was charged in an information on Jan. 10, 2011. According to court documents, while working as an electrical engineer for NASA, Chun also operated a business out of his home through which he illegally exported U.S. munitions to the South Korea and performed consulting services for Korean businesses. Chun illegally exported several infrared focal plane array detectors and infrared camera engines, which are classified as defense articles on the U.S. munitions list, to South Korea for use in Korean government projects between March 2000 and November 2005. Chun entered into a contract with a Korean company to design, build and test electronics to support the items he was exporting.</p>
	<p><b><i>Military Night Vision Scopes to Russia</i></b> – On Jan. 14, 2011, Anna Fermanova pleaded guilty in the Eastern District of New York to one count of violating the Arms Export Control Act. In March 2010, U.S. Customs and Border Protection (CBP) officers searched Fermanova's checked luggage at John F. Kennedy International Airport (JFK) in New York as she was preparing to board a flight to Moscow and identified three night vision items they suspected of being export controlled. ICE agents asked Fermanova about the night vision scopes, and she admitted she had obscured some of the identification numbers on the items and that she knew a license was required to export them to Russia. The items consisted of a Raptor night vision weapon sight and two advanced rifle sights, which are designated as defense articles. On July 15, 2010, Fermanova was arrested (pursuant to a July 9, 2010 complaint) at JFK upon her return from Russia and she was charged with attempting to export the military night vision scopes.</p>
	<p><b><i>Fighter Jet and Other Military Items to Iran</i></b> – On Jan. 13, 2011, Marc Knapp, of Simi Valley, California, pleaded guilty in the District of Delaware to a two-count information charging him with violating the Arms Export Control Act and the International Emergency Economic Powers Act. The information, filed on Nov. 22, 2010, charges that Knapp engaged in a seven-month course of criminal conduct involving illegal exports to Hungary and attempted exports to Iran during negotiations with undercover agents posing as Iranian purchasers. Among other things, Knapp attempted to export a complete F-5 Tiger II fighter jet, as well as F-14 flight ejection seats, anti-gravity flight suits, search and rescue beacons and emergency manuals for U.S. fighter</p>



	jets.
	<b><i>Bullet-Proof Vest Inserts to Colombia</i></b> – On Jan. 13, 2011, Jerome Stewart Pendzich, of Hampton, Tenn., pleaded guilty in the Eastern District of Tennessee to violating the Arms Export Control Act. In May and June 2009, Pendzich attempted to export military-grade, small-arms protective inserts to purchasers in Colombia, who were undercover agents.
	<b><i>U.S. Military Equipment to Yemen</i></b> – On Jan. 7, 2011, Amen Ahmed Ali was sentenced in the Eastern District of California to five years in prison followed by three years supervised release for conspiracy to act as an illegal agent of a foreign government, to possess stolen government property, and to unlawfully export defense materials. Ali pleaded guilty to these violations on Oct. 7, 2010. Beginning in 1987, Ali conspired with others to act as an unregistered agent of the Government of Yemen, and received instructions and acted on behalf of the Armed Forces Department of the Republic of Yemen. Ali also admitted that in 2003 he had conspired with another person to cause various defense articles to be exported to Yemen without a license, including bullet proof vests and chemical protective suits.
	<b><i>Weapons and Ammunition to Nigeria</i></b> – On Jan. 3, 2011, Emenike Charles Nwankwoala, of Laurel, Md., was sentenced in the District of Maryland to 37 months in prison followed by two years supervised release in connection with a scheme to export guns, including shotguns and pistols, and ammunition to Nigeria. According to the charges, Nwankwoala illegally shipped weapons and ammunition to Nigeria for a decade, while employed as a state probation officer. He concealed the weapons and ammunition in shipping containers and lied about the contents and destination of these items.
	<b><i>Arms Exports to Russia</i></b> – On Dec. 13, 2010, in the Middle District of Pennsylvania, Sergey Korznikov, a Russian citizen, pleaded guilty to a superseding information charging him with conspiracy to smuggle military articles from the United States to Russia. On July 29, 2010, Korznikov's co-defendant Mark Komoroski was sentenced to 32 months in prison and ordered to pay \$10,000 after pleading guilty to conspiring to smuggle military equipment to Russia. Komoroski, of Nanticoke, Pa.; Korznikov, of Moscow, and two companies, D&R Sports Center and Tactica Limited, were charged in a 2008 superseding indictment with conspiring to smuggle military equipment, including rifle scopes, magazines for firearms, face shields, and other military equipment from the United States to Russian to be resold to unknown persons.
	<b><i>Radiation-Hardened Semiconductor Devices to China</i></b> – On Dec. 3, 2010, Lian Yang, a resident of Woodinville, Washington, was arrested pursuant to a criminal complaint filed in the Western District of Washington charging him with conspiracy to violate the Arms Export Control Act. According to the complaint, Yang attempted to purchase and export from the United States to China 300 radiation-hardened, programmable semiconductor devices that are used in satellites and are also classified as defense articles under the U.S. Munitions List.
	<b><i>International Arms Dealer Extradited to U.S. to Stand Trial on Terrorism Charges</i></b> – On Nov. 17, 2011, after more than two years of legal proceedings in Thailand, accused international arms dealer, Viktor Bout was extradited from Thailand to the Southern District of New York to stand trial on charges of conspiracy to kill Americans, conspiracy to acquire and use an anti-aircraft missile, and conspiracy to provide material support to terrorists in connection with his efforts to provide millions of dollars of weapons,

	<p>including surface-to-air missiles and armor piercing rocket launchers, to the Fuerzas Armadas Revolucionarias de Colombia (FARC), a designated foreign terrorist organization based in Colombia. Bout was arrested on March 5, 2008 by Thai authorities in Bangkok, Thailand. According to court documents, between November 2007 and February 2008, Bout and associate Andrew Smulian agreed to sell large quantities of weapons to two confidential sources working with the Drug Enforcement Administration (DEA) who held themselves out as FARC representatives acquiring these weapons for the FARC to use in Colombia. During one series of consensually recorded meetings in Romania, Smulian allegedly advised the confidential sources that Bout had 100 Surface-to-Air missiles available immediately; that Bout could also arrange to have a flight crew airdrop the weapons into Colombia using combat parachutes; and that Bout and Smulian would charge \$5 million to transport the weapons. Bout engaged in multiple recorded phone calls with one of the DEA cooperating sources. On Feb. 17, 2010, Bout, and his associate, Richard Chichakli, were charged in a separate indictment in the Southern District of New York in connection with their alleged efforts to purchase aircraft from companies located in the United States in violation of economic sanctions that prohibited such transactions. The indictment also charged them with money laundering conspiracy, wire fraud conspiracy, and six separate counts of wire fraud. The indictment alleged that, for more than a decade, Bout engaged in a global weapons-trafficking business that included assembling a fleet of cargo airplanes capable of transporting weapons and military equipment to various parts of the world, including Africa, South America, and the Middle East. Chichakli, an American citizen, allegedly assisted Bout in the operations and financial management of Bout's network of aircraft companies. Bout and Chichakli are alleged in the indictment to have transferred more than \$1.7 million from overseas into U.S. bank accounts in order to purchase aircraft, via numerous front companies in order to avoid U.N. sanctions and U.S. prohibitions.</p>
	<p><b>Fully Automatic AK-47 Machine Guns to Drug Cartels in Mexico</b> – On Nov. 9, 2010, Julian Garcia-Penalzoza (aka Martin Ramirez-Rodriguez) was sentenced in the Northern District of Florida to 572 months in prison after pleading guilty on Aug. 17, 2010 to conspiracy to export machine guns to Mexico, conspiracy to possess and transfer machine guns, as well as additional drug and firearm charges. On June 22, 2010, a federal indictment was returned charging Garcia-Penalzoza and Ramiro Gomez-Gomez, both of Mexico, with conspiracy to illegally export 50 fully-automatic AK-47 machine guns to Mexico for use by drug cartels.</p>
	<p><b>Military Aircraft Engines to Venezuela</b> – On Oct. 28, 2010, Floyd D. Stilwell of Phoenix, Arizona, and Marsh Aviation Company of Mesa, Arizona were indicted in the District of Arizona for violating the Arms Export Control Act and conspiracy. The indictment alleges that beginning in Nov. 2005 through Feb. 2008, Stilwell Marsh Aviation and others contributed to the export of T-76 military aircraft engines from the United States to Venezuela for use by the Venezuelan Air Force. The T-76 aircraft engine was designed for the OV-10 Bronco Aircraft which is a light armed reconnaissance aircraft specifically suited for counterinsurgency missions. The indictment also alleges that the defendants furnished assistance to members of the Venezuelan Air Force, including training in the assembly, testing, maintenance and use of the T-76 military aircraft engine without the required authorization from the State Department.</p>
	<p><b>Rocket Propulsion Systems, Engines and Technology to South Korea</b> – On Oct. 20, 2010, Juwhan Yun, a.k.a. Jw Yun, a naturalized U.S. citizen of Korean origin, was sentenced in the Southern District of Florida to 57 months in prison and 3 years supervised release. On May 14, 2010, Yun pleaded guilty to attempting to illegally export defense articles to South Korea,</p>

	<p>including components for a 20 mm gun, known as the M61Vulcan; components for a SU-27 Russian fighter jet; and RD-180 rocket propulsion systems, and related technology without the required State Department licenses. Yun was arrested on April 15, 2009, in Fort Lauderdale, Fla., and subsequently indicted on April 29, 2009 for attempting to purchase rocket materials for a company working on the Korean Satellite Launch Vehicle project and which was previously involved in developing Korea's KOMPSAT-1 satellite. Yun was previously convicted in May 1989 of conspiracy to violate the Arms Export Control Act in connection with an effort to export 500 quarter-ton bombs of sarin nerve gas to Iran. None of the bombs ultimately made it to Iran. He was sentenced to 39 months in federal prison in 1989. He was released from federal prison in March 1991 and was debarred by the State Department as a result of his conviction.</p>
	<p><b>Missiles, Grenade Launchers &amp; Other Weapons to Sri Lankan Terrorists:</b> On Oct. 18, 2010, a federal jury in the District of Maryland convicted Balraj Naidu, a citizen of Singapore, of conspiracy to provide material support to a foreign terrorist organization stemming from his efforts to supply the Liberation Tigers of Tamil Eelam (Tamil Tigers) with advanced American weaponry. He was later sentenced to 57 months in prison on Dec. 16, 2010.</p>
	<p><b>AK-47s Assault Rifles to Somalia</b> – On Oct. 5, 2010, Joseph O'Toole, a former U.S. Air Force Colonel F-4 Fighter pilot and U.S. citizen, and Chanoch Miller, an Israeli national, pleaded guilty in the Southern District of Florida to charges of knowingly and willfully conspiring to export AK-47 assault rifles from the U.S. to Somalia without a license from the Department of State. According to the indictment and statements made during the plea hearing, beginning in April 2010, Miller contacted O'Toole to arrange for the transportation of approximately 6,000 fully automatic AK-47 assault rifles from Bosnia to Somalia.</p>
	<p><b>U.S. Fighter Jet Engines and Parts to Iran</b> – On Sept 22, 2010, Jacques Monsieur, a Belgian national and resident of France suspected of international arms dealing for decades, was sentenced by a judge in the Southern District of Alabama to 23 months imprisonment. On Nov. 23, 2009, Monsieur pleaded guilty to conspiracy to illegally export F-5 fighter jet engines and parts from the United States to Iran. He and co-conspirator Dara Fatouhi were first charged by indictment on Aug. 27, 2009, with conspiring to illegally export F-5 fighter jet engines and parts from the United States to Iran, as well as money laundering, smuggling, and Iran embargo violations. Monsieur was arrested on Aug. 28, 2009 after arriving in New York aboard a flight from Panama. Fatouhi, an Iranian national living in France who allegedly worked with the Iranian government to procure military items, remains at large.</p>
	<p><b>Sensitive Military Encryption Technology to China</b> – On Sept. 13, 2010, Chi Tong Kuok, a resident of Macau, China, was sentenced in the Southern District of California to serve 96 months in prison for his efforts to obtain sensitive defense technology used in encrypted U.S. military or government communications and to cause them to be illegally exported to Macau and Hong Kong. On May 11, 2010, Kuok was convicted at trial of conspiracy to export defense articles without a license and to smuggle goods, smuggling goods, attempting to export defense articles without a license and money laundering.</p>
	<p><b>\$4 Million Arms Shipment to Cote d'Ivoire</b> - On Sept. 9, 2010, a criminal complaint was filed in the Northern District of California charging Nguessan Yao, a citizen of Cote d'Ivoire (Ivory Coast) with conspiring to smuggle goods</p>

	<p>out of the United States in connection with a plot to illegally export 4,000 handguns, 200,000 rounds of ammunition, and 50,000 teargas grenades from the United States to Cote d'Ivoire. Yao was arrested by federal agents at JFK Airport on Sept. 9, 2010, in New York before departing the United States.</p>
	<p><b><i>Stolen U.S. Military Night Vision &amp; Optics to China and England</i></b> – On Sept. 9, 2010, a grand jury in the Southern District of California returned an indictment charging Phillip Andro Jamison with trafficking in stolen government property, interstate transportation of stolen goods and exporting defense articles without a license. Jamison, a U.S. Navy employee stationed aboard Naval Amphibious Base Coronado, California, allegedly stole more than 280 items from the U.S. Navy between October 2008 and September 2009 and then sold these items to customers via eBay, an Internet auction and shopping website. The indictment further alleges that Jameson illegally exported to Hong Kong and England combat-grade night vision devices, riflescopes and laser aiming devices without first obtaining the required export licenses from the State Department.</p>
	<p><b><i>F-5 Fighter Jet Components to Iran</i></b> – On July 7, 2010, a superseding indictment was returned in the District of Columbia charging Mac Aviation Group, an Irish trading company, and its officers Thomas and Sean McGuinn of Sligo, Ireland, with purchasing F-5 fighter aircraft parts from U.S. firms and illegally exporting them to Iran. The defendants were previously charged in July 2008 in connection with illegally exporting helicopter engines and other aircraft components to Iran. The new charges allege that, from 2005 and continuing until 2006, the defendants caused canopy panels designed for the F-5 fighter jet, valued at \$44,500 to be exported from the United States to Iran and that the defendants falsely stated that the end-user for the panels was Nigeria.</p>
	<p><b><i>Military Optics Technology to China, Russia, Turkey and South Korea</i></b> – On June 22, 2010, in U.S. District Court for the District of Colorado, Rocky Mountain Instrument Company (RMI), a Colorado corporation located in Lafayette, Colorado, pled guilty to one count of knowingly and willfully exporting defense articles without a license in violation of the Arms Export Control Act. The company was then immediately sentenced to five years of probation and ordered to forfeit \$1,000,000. Between April 2005 and October 2007, RMI exported from the United States to Turkey, South Korea, the People's Republic of China, and Russia, prisms and technical data related to various optics used in military applications, which were designated as defense articles on the U.S. Munitions List, without having first obtained the required export licenses. The military technology that RMI illegally exported consisted of guidance or targeting systems used in such military items as unmanned aerial vehicles, AC-130 gunships, Abrams tanks, TOW missile systems, and Bradley fighting vehicles.</p>
	<p><b><i>Fighter Jet Components to Iran</i></b> – On June 17, 2010, Omid Khalili, an Iranian national, pleaded guilty in the Southern District of Alabama to attempting to illegally export U.S. fighter jet parts from the United States to Iran. Khalili, along with defendant "Masun," whose last name is unknown, were charged in a nine-count indictment on Jan. 28, 2010, with conspiracy, money laundering, smuggling, as well as violations of the Arms Export Control Act and the International Emergency Economic Powers Act. Khalili and Masun have been actively working with the Iranian government to procure military items for the Iranian government.</p>

	<p><b><i>Tactical SUVs Armed with M 134 Mini-guns to Turkmenistan</i></b> – On April, 23, 2010, a Feb. 24, 2010 indictment was unsealed in the District of Arizona charging Ruslan Gilchenko and Victor Dobrogaiev with conspiracy to violate the Arms Export Control Act, money laundering and fraud charges. According to the charges, Gilchenko and Dobrogaiev attempted to obtain three sport utility vehicles outfitted with M134 Mini-guns, which are fully automatic defense suppression weapons that fire at a rate of 3,000 rounds per minute, for illegal export to Turkmenistan. As part of the conspiracy, the defendants allegedly agreed to pay \$1.2 million to purchase three armed vehicles and forwarded \$340,000 to sellers in the U.S. as a down payment.</p>
	<p><b><i>Military Flight Simulation Technology Overseas</i></b> – On March 25, 2010, an indictment was unsealed in federal court in the District of Massachusetts charging Hok Shek Chan, Wong Fook Loy and Ngo Tek Chai with conspiring to and attempting to illegally export munitions without the required licenses. According to the October 2008 indictment, Chan, a Hong Kong citizen, conspired with two Malaysian nationals, Wong Fook Loy and Ngo Tek Chai, and others to cause the export of 10 indicators servo tachometers used in C-130 military flight simulators from the United States without the required license from the State Department.</p>
	<p><b><i>BAE Systems PLC Pleads Guilty and Ordered to Pay \$400 Million</i></b> – On March 1, 2010, BAE Systems PLC (BAES), a multinational defense contractor with headquarters in the United Kingdom, pleaded guilty in the District of Columbia to conspiracy to defraud the United States, conspiracy to make false statements about its Foreign Corrupt Practices Act compliance program, and conspiracy to violate the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR). BAES was sentenced on March 1, 2010 to a \$400 million fine, 36 months probation, and a \$400 assessment. With respect to the conspiracy to violate AECA, BAES admitted to making false statements and failing to make required disclosures to the U.S. government in connection with the administration of certain regulatory functions, including statements and disclosures related to applications for arms export licenses, as required by the AECA and ITAR. As part of the licensing scheme, applicants are required to identify associated commissions to the State Department- whether they are legitimate commissions or bribes - paid to anyone who helps secure the sales of defense materials. BAES admitted that, as part of the conspiracy, it knowingly and willfully failed to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense items in violation of the AECA and ITAR.</p>
	<p><b><i>Assault Weapon Parts and Gun Sights to Philippines</i></b> – On Feb. 24, 2010, a federal grand jury in the Central District of California returned an indictment against three men, Romulo Reclusado, Tirso Aguayo and Mike Cabatingan, for conspiring to illegally export defense articles and other controlled items from the United States to the Philippines. The defendants allegedly conspired to export to the Philippines molds used to make components for AR-15 assault rifles as well as holographic rifle sights. Aguayo and Cabatingan were arrested on Feb. 25, 2010.</p>
	<p><b><i>Semi-Automatic Pistols to Cayman Islands</i></b> – On Feb. 23, 2010, a grand jury in the Southern District of Florida returned an indictment charging Junior Estiven with conspiracy to smuggle firearms, making false statements in connection with the acquisition of firearms, and possession of firearms with obliterated serial numbers. Estiven and others allegedly conspired to smuggle semi-automatic pistols to the Cayman Islands. Several other individuals were charged and pleaded guilty in connection with the scheme previously. David Gilbert Lyons, Mitchell Anthony Brown and Brittanio Jermie Watson were all</p>





	indicted in the Southern District of Florida on May 5, 2009 in connection with the attempted illegal export of firearms to the Cayman Islands and other charges.
	<b><i>Economic Espionage / Theft of Space Shuttle and Rocket Secrets for China</i></b> – On Feb. 11, 2010 former Rockwell and Boeing engineer Dongfan “Greg” Chung was sentenced to 188 months imprisonment and three years supervised release after his July 16, 2009 conviction in the Central District of California. Chung was convicted of charges of economic espionage and acting as an illegal agent of the People’s Republic of China (PRC), for whom he stole restricted technology and Boeing trade secrets, including information related to the Space Shuttle program and the Delta IV rocket. According to the judge’s ruling, Chung served as an illegal agent of China for more than 30 years and kept more than 300,000 pages of documents reflecting Boeing trade secrets stashed in his home as part of his mission of steal aerospace and military trade secrets from Boeing to assist the Chinese government. Chung sent Boeing trade secrets to the PRC via the mail, via sea freight, via the Chinese consulate in San Francisco, and via a Chinese agent named Chi Mak. On several occasions, Chung also used the trade secrets that he misappropriated from Boeing to prepare detailed briefings that he later presented to Chinese officials in the PRC.
	<b><i>Military Equipment to Yemen, Libya &amp; Other Locations</i></b> – On Jan. 7, 2010, Ioannis Papathanassiou, of Vienna, Va., entered a guilty plea on behalf of his company, Taipan Enterprises, Ltd., in the Eastern District of Virginia for attempting to illegally broker the sale of weapons, night vision goggles and other military equipment to purchasers in Yemen, Libya, Chile and other nations. Taipan Enterprises was ordered to pay a fine of \$15,000. Court records indicate that Papathanassiou attempted to arrange the sale of Swiss-made machine pistols to a purchaser in Yemen, attempted to arrange the sale of Canadian night vision technology from Canada to Libya, attempted to arrange the sale of Canadian armored vehicles to the Chilean marine corps, attempted to arrange the sale of M4 rifles, gas grenades, armored vehicles and other military equipment to Chile, and attempted to arrange the sale of a number of military armored vehicles from a Belgian defense manufacturer to a Missouri-based company for final use in Vietnam.
	<b><i>Firearms to Mexico</i></b> – On Jan. 6, 2010, Daniel Bernardino was convicted in the Northern District of Texas on firearms and ammunition smuggling charges in connection with a nationwide investigation of the violent drug cartel, La Familia, and its efforts to smuggle firearms to Mexico in order to arm their personnel there. Seven individuals from the Fort Worth, TX, area were originally indicted along with Bernardino on firearms smuggling and related charges.
	<b><i>Firearms to Canada</i></b> – On Dec. 18, 2009, Ugur Yildiz, a former suburban Chicago gun shop owner, was sentenced in the Northern District of Illinois to 7½ years in prison for illegally exporting more than 200 firearms to Canada - some of which were later used in violent crimes. Yildiz, of Park Ridge, owned the Chicagoland Bells gun store. He was charged with violations of the Arms Export Control Act. Canadian authorities recovered several guns registered to Yildiz -- including one traced to a killing and another that was pointed at a law enforcement officer.
	<b><i>Missile Components to Iran</i></b> – On Dec. 2, 2009, a federal grand jury in the Northern District of Illinois returned an indictment charging Davoud Baniameri, an Iranian national and U.S. legal permanent resident, and Andro Telemi, a naturalized U.S. citizen born in Iran, with conspiring to illegally export TOW missile components from the United States to Iran. According to

	the indictment, between August and September 2009, Baniameri and Telemi conspired to illegally export to ten connector adapters that are used to attach the missile guidance set to the traversing unit for the TOW and TOW2 missile systems. These parts are designated as defense articles on the U.S. Munitions List and require a State Department license to export..
	<b><i>Military Electronics for Radar, Fighter Jets, and Missiles to Iran</i></b> -- On Dec. 2, 2009, criminal indictments were unsealed in the Districts of Delaware and Massachusetts relating to the prosecution of Iranian arms procurement agent Amir Hossein Ardebili. Defendant Ardebili pled guilty to these indictments on May 19, 2008. Ardebili has pled guilty to multiple violations of the Arms Export Control Act, International Emergency Economic Powers Act, smuggling, conspiracy and money laundering. The charges result from a three year international undercover investigation which exposed Ardebili's role as a prolific arms acquisitions agent for the government of Iran. During the investigation, Ardebili negotiated the purchase and illegal export of a number of military components, including: QRS-11 Gyro Chip Sensors, which are used in numerous advanced aircraft, missile, space and commercial applications; MAPCGM0003 Phase Shifters, which perform a key function in electronically steered antennae and have many applications including phased array radar, which is used in military target acquisition and missile guidance; and Digital Air Data Computer, which is a replacement for the computer installed on the U.S. F-4 fighter aircraft used by Iran that calculates flight parameters including altitude, air speed, static pressure, mach number, and true angle of attack.
	<b><i>Anti-Aircraft Missiles and Machine Guns to Syria</i></b> -- On Nov. 24, 2009, a grand jury in the Eastern District of Pennsylvania returned an indictment charging Dani Nemr Tarraf and Douri Nemr Tarraf, with conspiring to illegally export anti-aircraft missiles (FIM-92 Stingers) machine guns (approximately 10,000 Colt M4 Carbines), as well as M72 Light anti-armor weapons, Glock pistols, as well night vision equipment, from Philadelphia to the Port of Latakia, Syria. In addition, these two defendants and Hassan Mohamad Komeiha, and Hussein Ali Asfour — were charged with conspiring to transport stolen goods.
	<b><i>Military Technical Data on Unmanned Aerial Vehicles to China</i></b> – On July 1, 2009, Dr. John Reece Roth was sentenced in the Eastern District of Tennessee to 48 months in prison, two years supervised release and a \$1,700 assessment for illegally exporting sensitive military technical data related to a U.S. Air Force contract. Roth, a former Professor Emeritus at the University of Tennessee, was convicted on Sept. 2, 2008 of 15 counts of violating the Arms Export Control Act, one count of conspiracy, and one count of wire fraud. Roth had illegally exported military technical data relating to plasma technology designed to be deployed on the wings of Unmanned Aerial Vehicles (UAVs) or “drones” operating as a weapons or surveillance systems. The illegal exports involved technical data related to an Air Force research contract that Roth provided to foreign nationals from China and Iran. In addition, Roth carried multiple documents containing controlled military data with him on a trip to China and caused other controlled military data to be e-mailed to an individual in China. On Aug. 20, 2008, Atmospheric Glow Technologies, Inc (AGT), a privately-held plasma technology company in Tennessee, also pleaded guilty to charges of illegally exporting U.S. military data about drones to a citizen of China in violation of the Arms Export Control Act.
	<b><i>Missiles &amp; Other Arms to Colombian Terror Organization</i></b> – On July 1, 2009, Palestinian born businessman Tareq Mousa al-Ghazi was sentenced in the Southern District of New York to 25 years in prison after his March 17,

	<p>2009 conviction for conspiring with Syrian arms dealer, Monzer Al-Kassar, and others in a plot to sell surface-to-air missiles, 4,000 grenades, and nearly 9,000 assault rifles to the Fuerzas Armadas Revolucionarias de Colombia, or FARC, a designated terrorist organization in Colombia. Al-Ghazi was found guilty of conspiracy to murder U.S. officers and employees, conspiracy to acquire and export anti-aircraft missiles, and conspiracy to provide material support to terrorists. Al-Ghazi's co-defendants, Monzer al-Kassar and Luis Felipe Moreno Godoy, were both convicted at trial on Nov. 20, 2008 in connection with the same conspiracy and were sentenced on Feb. 24, 2009 to 30 years imprisonment and 25 years imprisonment, respectively. In June 2007, Al Kassar was arrested in Spain, while Moreno and El Ghazi were arrested in Romania pursuant to a May 29, 2007 indictment alleging that they agreed to sell millions of dollars worth of surface-to-air missiles, rocket-propelled grenade launchers, ammunition, and machine guns to the FARC, between February 2006 and May 2007.</p>
	<p><b><i>Military Night Vision Technology to China</i></b> – On July 1, 2009, Bing Xu, of Nanjing, China, was sentenced in the District of New Jersey to 22 months in prison followed by two years of supervised release after pleading guilty on Feb. 24, 2009, to conspiracy to illegally export military-grade night vision technology to China. Xu, a manager at Everbright Science and Technology, Ltd, a company in Nanjing, China, admitted that he conspired with others at Everbright to purchase certain night-vision technology from a company in the United States, which required a license from the State Department for export.</p>
	<p><b><i>Thermal Imaging Cameras to China</i></b> – On June 9, 2009, a federal grand jury in the Southern District of Ohio indicted Hing Shing Lau, also known as Victor Lau, a foreign national living in Hong Kong, Peoples Republic of China, on charges of trying to buy 12 infrared thermal imaging cameras from a Dayton-area company in order to illegally export the cameras to Hong Kong and China. The indictment alleges that Lau tried to buy 12 thermal imaging cameras manufactured in Texas by contacting a company in the Dayton area. On three occasions, he wired transferred a total of \$39,514 from Hong Kong to the U.S. as partial payment for the cameras. The indictment charges Lau with two counts of violating export control laws and four counts of money laundering. Canadian authorities arrested Lau on June 3, 2009, at the Toronto International Airport pursuant to a provisional arrest warrant issued by U.S. authorities. The investigation was conducted by the FBI, and BIS, with the assistance of the U.S. Department of State.</p>
	<p><b><i>Amplifiers &amp; Missile Target Acquisition Technology to China</i></b> – On May 14, 2009, Joseph Piquet, the owner and President of AlphaTronX, a company in Port St. Lucie, Fla., that produces electronic components, was sentenced in the Southern District of Florida to 60 months in prison followed by two years supervised release. On March 5, 2009, he was convicted of seven counts arising from a conspiracy to purchase military electronic components from Northrop Grumman Corporation, and to ship them to Hong Kong and the People's Republic of China without first obtaining required export licenses under the Arms Export Control Act and the International Emergency Economic Powers Act.</p>
	<p><b><i>Military Night Vision Goggles to Italy</i></b> – On May 12, 2009, Rigel Optics, Inc. was sentenced in the Southern District of Iowa to pay a \$90,000 fine and a \$400 special assessment for illegally exporting military night vision goggles to Italy. Rigel's owner, Donald Wayne Hatch, was sentenced to two years probation and ordered to pay a \$5,000 fine for making false statements in connection with the illegal export. On July 31, 2008, the defendants pleaded</p>



	guilty to these violations. The defendants were indicted on June 24, 2008 for illegally exporting military night vision systems.
	<b><i>Rocket / Space Launch Technical Data to China</i></b> – On April 7, 2009, Shu Quan-Sheng, a native of China, naturalized U.S. citizen and PhD physicist, was sentenced to 51 months in prison for illegally exporting space launch technical data and defense services to the People's Republic of China (PRC) and offering bribes to Chinese government officials. Shu pleaded guilty on Nov. 17, 2008, in the Eastern District of Virginia to a three-count criminal information. He was arrested on Sept. 24, 2008. He was the President, Secretary and Treasurer of AMAC International, a high-tech company located in Newport News, Va., and with an office in Beijing, China. Shu provided the PRC with assistance in the design and development of a cryogenic fueling system for space launch vehicles to be used at the heavy payload launch facility located in the southern island province of Hainan, PRC. The Hainan facility will house launch vehicles designed to send space stations and satellites into orbit, as well as provide support for manned space flight and future lunar missions. Shu also illegally exported to the PRC technical data related to the design and manufacture of a "Standard 100 M3 Liquid Hydrogen (LH) 2 Tank. In addition, Shu offered approximately \$189,300 in bribes to government officials with the PRC's 101 Institute to induce the award of a hydrogen liquefier project to a French company he represented. In January 2007, the \$4 million hydrogen liquefier project was awarded to the French company that Shu represented.
	<b><i>Military Aircraft Components to Iran</i></b> – On April 2, 2009, eleven defendants were indicted in the Southern District of Florida on charges of participating in a conspiracy to export U.S.-made military aircraft parts to Iran. On April 3, 2009, federal agents arrested defendant Baktash Fattahi, an Iranian national and legal U.S. resident, at his residence in Lancaster, Calif. The other ten defendants charged in the indictment are Amir Hosein Atabaki, an Iranian national; Mohammad Javad Mohammad Esmail, an Iranian national; Abbas Haider, an Indian citizen residing in Dubai; Mohammed Javid Yahya Saboni, an Iranian national residing in Dubai; Reza Zahedi Pour, an Iranian national; Mahdi Electronic Trading Co, an Iranian business; Planet Commercial Brokerage, a Dubai business; Raht Aseman Co, Ltd, an Iranian business; Sahab Phase, an Iranian business; and Sea Speed UAE, a Dubai business. According to the indictment, the defendants conspired to and did export 13 different types of military aircraft parts to Iran by way of Dubai, United Arab Emirates. Among the aircraft parts the defendants are alleged to have obtained and illegally shipped to buyers in Iran are parts for the F-5 ("Tiger") Fighter Jet, the Bell AH-1 ("Cobra") Attack Helicopter, the CH-53 Military Helicopter, the F-14 ("Tomcat") Fighter Jet, and the UH-1 ("Huey") Military Helicopter.
	<b><i>Military Aircraft Parts to Israel</i></b> – On April 2, 2009, Stuart Wax pleaded guilty in the District of Connecticut to a one-count criminal information charging him with making a false statement in an export control document. Wax entered the plea both for himself and on behalf of his company, M.M.M. Wheels, Inc. In 2003, Wax exported parts used in the F-4 fighter jet to be sent to a company in Israel without the required license from State Department.
	<b><i>Aircraft Engines and Components to Iranian Military</i></b> – On March 24, 2009, a 25-count indictment was unsealed in the District of Columbia charging Mac Aviation Group, a trading company in Ireland, and three of its officers with purchasing aircraft engines and components from U.S. firms and illegally exporting these components to Iran via Malaysia and the United Arab

	<p>Emirates. Among the alleged recipients of these goods was the Iran Aircraft Manufacturing Industrial Company (HESA), a military entity designated by the U.S. for its role in Iran's nuclear and ballistic missile program, as well as Iran Aircraft Industries (IACI). According to the indictment, the defendants purchased 17 aircraft engines from Rolls-Royce in Indiana and caused them to be exported to a publishing company in Malaysia, and later shipped on to HESA in Iran. The indictment also alleges that the defendants purchased 50 aircraft components known as "5<sup>th</sup> Stage vanes" from the United States and illegally exported them to Iran, and also obtained various U.S.-origin aircraft bolts, which they routed through a trading company in the United Arab Emirates to Iran.</p>
	<p><b><i>Sensitive U.S. Technology to Iranian Missile &amp; Nuclear Entities</i></b> -- On March 20, 2009, Iranian national and resident Majid Kakavand was arrested in France pursuant to a provisional U.S. arrest warrant issued in the Northern District of California. An April 7, 2009 indictment charges Kakavand and two co-defendants, Amir Gasemi and Alex Ramzi, with overseeing an international network that allegedly purchased thousands of military and commercial items from U.S. companies and illegally exported these goods to Iran via Malaysia. The alleged recipients of these goods included two Iranian military entities designated by the United States for their role in Iran's nuclear and ballistic missile program. According to court documents, Kakavand served as a director of a company in Malaysia called Evertop Services Sdn Bhd, that he and others created to procure goods from the United States and Europe for export to Iran. Kakavand has allegedly exported more than 30 shipments of goods from the United States to Iran since February 2006. These shipments contained electronic and avionics components, including capacitors, spectrometers, resistors, sensors, connectors, and airborne antennae.</p>
	<p><b><i>3,500 Military Night Vision Goggles to Iranian military</i></b> -- On March 6, 2009, Shahrazad Mir Gholikhan was sentenced in the Southern District of Florida to 63 months in prison for brokering defense articles to Iran and other export violations in connection with an effort by she and her husband, Mahmoud Seif, to illegally procure 3,500 sets of Generation III military night vision goggles from the United States for Iran's military and police forces. Gholikhan was convicted of the charges on Dec. 19, 2008.</p>
	<p><b><i>Night Vision Technology to Singapore</i></b> -- On Jan. 15, 2009, Thomas J. Loretz was indicted in the District of Massachusetts for illegally exporting defense articles and making false statements in connection with the illegal export of sophisticated night vision technology to Singapore. Specifically, Loretz was charged with illegally exporting to Singapore hundreds of Imaging Grade Micro-Channel Plates and Premium Grade Micro-Channel Plates, which are used for military night vision optics.</p>